

Part I: U.S. Export Controls in an Era of Strategic Competition

House Foreign Affairs Subcommittee on Oversight and Accountability

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WITNESSES:

GIOVANNA CINELLI, national security fellow at the National Security Institute

STEVE COONEN, special advisor at China Tech Threat

NAZAK NIKAKHTAR, chair of national security practice at Wiley Rein LLP

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[*]BRIAN MAST: The Subcommittee on Oversight and Accountability will come to order. The purpose of this hearing is to examine the Biden administration's sanctions policy and its use implementation and enforcement of sanctions on a range of malign actors. I now recognize myself for an opening statement. Thank you.

So today, the Subcommittee on Oversight and Accountability will begin examining the implementation and enforcement of US export controls as a part

of the committee's 90-day review of the Department of Commerce's Bureau of Industry and Security or BIS. There's a lot of buzzwords being thrown around these days.

We spoke about a lot of them in my office in the last couple of days. People like to talk about strategic competition – competition. President Biden has used the phrases, seeking competition, not conflict, but I want to cut through some of the – the DC bull and say it's not competition if one boxer doesn't step into the ring and it's completely undeniably, 100 percent unacceptable that American soldiers, men, and women like ourselves, may have to one day be forced to stare down the barrel of an American made weapon because the Biden administration has let the **People's Republic of China** get its hands on our tech.

Members of the subcommittee on both sides of the Dias have served our country in uniform, honorably. We don't see eye to eye on every single policy issue, but I do know that we agree on this. When our men and women are staring down at enemy forces across the battlefield, our weapons and our will better be better than theirs.

And there's no reason on God's green earth that we should be willing to – to be handing over our weapons to our enemy or the means to build those weapons. I'd like to begin today's hearing by comparing and contrasting **Xi Jinping** and Joe Biden's approach to the relationship between our two nations. Let's be clear that **Xi Jinping** is gearing up for a fight.

He's preparing for conflict by being more competitive. Picture behind me is the DF-17. It's the People's Liberation Army First Ground Launch Hypersonic Glide vehicle designed for anti-ship missions. **China's** state media referred to it as the aircraft killer. Everybody should be asking themselves who's aircraft carrier do you think this missile is designed to kill? What sailors do you think it is designed to end the lives of? XI has told US military wants capability to attack Taiwan by 2027. He's told his generals to dare to fight. He's ready for a fight and he's ready to do everything he can to make sure that China wins. That includes getting his hands on American tech using our supply to his advantage.

I brought a few articles that illustrate this point. Let's read a couple of these headlines. The Washington Post on – on October 17th, 2022 American Technology Boosts **China's** Hypersonic Missile Program. Washington Post again on April 9th, 2021, **China** Builds Advanced Weapons System Using American Ship Technology.

The fact is that failure to stop transfer and espionage of critical American technology to the People's Republic of **China** has contributed to its rapid military modernization and the rapid decrease in the United States national security. Let's put a finer point on it. The **Chinese** Communist Party is using American technology to build more precise, more lethal weapons to sink our

carriers and to kill our troops.

That is **Xi Jinping**'s plan. If **Xi Jinping** is gearing up for a fight, Joe Biden, in my opinion, is doing the opposite of that. He is desperate to appease the enemy, even if it means giving away our own military's advantage.

Remember, we're not looking for a fight. That was the statement. We're looking for competition.

But as the great General Patton said, real Americans love to fight. They love the stat, the clash and the sting of battle. At the heart of his appeasement strategy s commerce's Bureau of Industry and Security, the agency's authority over export controls, its seeming refusal to use that authority. It's infuriating because I can sit here and say that yes, **China** is in fact stealing our technology but more concerning the administration is willing to hand it over to them, even in the midst of them being thieves.

Let's look at the facts. During a six-month period between November 2020 and April 2021 BIS approved 60 billion worth of licenses for American technology to Huawei and 40 billion worth of licenses to SMIC. It's denied less than one percent of licenses to both companies. 98 percent of controlled technologies are transferred to **China** without license.

Of the one percent of exports that do need a license, only two percent of those licenses are denied. The Commerce control list is more than 500 pages long, but it seems that every entity has a license exception. And even when a license is required, it is rubber stamped and sent back out the door. We have laws and regulations that fill binders upon binders upon binders.

And there's just some simple stacks of them that my staff has put together. But they're wasted words if we don't actually enforce them. Our yes has to be yes. Our no, has to be no. Our adversaries have to take our country and our administration seriously. It's because of, in my opinion, Joe Biden's refusal to lead through strength that that's not being done.

While **Xi Jinping** is ready for a fight, President Biden is that guy with a quivering lip that won't look the bully in the eye and say no, I'm going to stand up to you. That's not going to be allowed. You're not going to do that. So let's talk about how we fix this. The answer is actually implementing export controls in part.

Congress gave the executive branch considerable authority in the Export Control Reform Act of 2018 to protect our national security but the Biden administration is failing to implement and including blatant refusal to even define emerging and critical technologies as the law requires. It's ironic really that the administration seems to determine to overstep its authority in almost every case, but now that it

has the ability to do something to keep Americans safe, it says, no, thanks.

But that refusal to act as a slap in the face to those who sent us here to represent them. In March 2023, Morning Consult poll found that one and two voters support restricting American companies from exporting to or doing business in **China** when it comes to advancing their technologies. Some of our friends on K Street who lobby against tough export controls like to overcomplicate things.

They make the system out to be more intimidating and confusing than it really is. But when I'm back home, my constituents tend to keep things pretty simple. Don't sell American technology to an adversary that can be used to kill Americans. Today, we're going to hear testimony from leading experts including former commerce and DoD officials.

One of them ran BIS, another led Ditka's counter **China** work until he resigned in protest. They will tell us firsthand how broken our export and control system is and where we can work to fix it together. This hearing is just a starting point for this subcommittee's oversight of BIS and its use of export controls.

In coming months, we plan to invite BIS officials to testify and answer for these failures. Export controls are about ensuring America is taken seriously on the global stage. We cannot be the nation of all talk and no action. Of empty threats, our actions have to match our words. Export controls are about national security and as a soldier, when my brothers and sisters in arms are in that same position, I want them to know that their weapons can blow our enemies off the face of the earth and not have to worry that our enemies have the same capability to do that to them.

Export controls are about beating **China**. I firmly believe that we have to run faster than our enemies, but we should not be working at all to give them any kind of capability to catch up, and **China** is ready for that fight.

Chair now recognizes the very distinguished, the very honorable ranking member, the gentleman from Colorado, Mr. Crow for any opening statement.

And if it goes too long, I'm certainly not going to gavel you down. That would be very hypocritical of me. So the chair now recognizes you.

REP JASON CROW: Thank you, Mr. Chairman and thank you for the – the additional runway. I don't think I will – I will need it, but appreciate you calling this really important hearing today. Before I begin, I just wanted to note a little bit of my disappointment in two of the witnesses providing materials far past the required deadline when those materials by rule are normally allowed.

It just makes it hard for members to prepare for the hearing, for staff to prepare for hearing and for us to really get out of these hearings, the full – full measure

of our oversight if we don't have those materials in advance and would just ask that in future testimony for both of those witnesses that they do comply with that – with that rule.

And I appreciate that. So with that today we are going to examine the Biden administration's use of export controls and broader US export control policy in the role of the Department of Commerce Bureau of Industry and Security or BIS in carrying out those policies. The US economic might if properly wielded through cooperation with our thriving private sector as well as allies and partners can serve as a multiplier for advancing US national security and boosting our economic competitiveness in the face of strategic competition with the PRC. One of the most important ways we can wield that power is through the smart and effective imposition of export controls.

Now export controls can be used to cut off access to American products, intellectual property and technologies that bad actors would use to undermine US security, violate human rights and circumvent international law. This is one way in which the US government can pull the economic levers at our disposal and it is a tool the Biden administration has used repeatedly and robustly and arguably more than any previous administration and I would say to great effect.

That's not to say they're perfect because the very nature of export controls is you are evolving, you're looking at data, you're responding to the information that you see in real time and you continue to – to evolve those and improve those. They are by nature dynamic and changing. But the Biden administration's use of export controls has been broad.

It has been expansive and historic, particularly in countering **China** and Russia. In response to Russia's renewed invasion of Ukraine, the administration swiftly built a coalition with 38 other countries imposing stringent export controls on Russia and Belarus, the largest and most coordinated effort of its kind in history outside of the multilateral regime.

In just over two years, it has listed hundreds of PRC based entities including through its October 2022 controls, which took unprecedented steps to restrict the PRC from obtaining advanced computing chips, developing and maintaining supercomputers and manufacturing advanced semiconductors. Critical allies like Japan and in the Netherlands have announced their plans to impose their own controls.

A demonstration of the strength of US leadership and welcome development to multilateral allies our policies on **China**. Our controls are most effective when implemented alongside partners and I hope today's discussion can shed light on how we can enhance international coordination on export controls. Today, the US uses export controls more often and for a greater number of policy objectives than ever before.

That's just a fact. BIS adapts and strengthens its rules on an ongoing basis as I mentioned earlier, responding and evolving as the conditions require. Similarly, it is important that congress conduct oversight to ensure that our controls are calibrated to achieve our objectives and ensure they are not causing unintended consequences to US interests.

We are engaged in an economic and technological competition with the PRC, especially when it comes to critical technologies that will define the future. To win this competition, we – we need to do two things simultaneously with our controls. First, as the Biden administration has done, we must not export sensitive and advanced critical technology to **China** that would undermine our national security.

We all share that goal. Second, we must ensure that our controls are focused and narrow, so they are not unduly impeding or undermining our own US economic strength and allowing our companies to become global leaders in these technologies. It's a delicate balancing act, but to win the strategic competition, it's critical that we do both.

This is why congress must conduct honest, constructive oversight and ensure that BIS has the tools and resources it needs to do its job effectively. Having imposed unprecedented controls on **China** and Russia in the past year, congress must ensure that BIS has the proper staffing and resources to effectively implement and enforce those controls as well as to maintain a swift, transparent, and rigorous licensing application and approval system.

BIS's staffing and budget have frankly not kept up with the growing mandate that we have given it. For this reason, I hope this committee also gets the chance to hear from the administration directly. So with that said, I hope you can spend some time today on productive oversight that highlights where BIS can improve, how we can strengthen coordination with partners and allies and export controls even further and how we can give BIS the tools and resources it needs to enforce our already existing policies effectively.

And with that, I yield back the balance of my time.

REP BRIAN MAST: We both went over, I'll call it, even – even. Other members of the committee are reminded that opening statements may be submitted for the record. We are pleased to have a distinguished panel of witnesses before us today on this important topic. We thank you all for being here. The Honorable Miss Nazak Nikakhtar is the chair of national security Practice at Wiley Rein LLP and was the former assistant secretary for industry and analysis at the International Trade Administration.

Mr. Steve Coonen was the former senior foreign affairs adviser for the Defense Technology Security Administration, the Honorable Kevin Wolf is a partner at

Akin Gump Strauss Hauer & Feld LLP and a senior fellow at the Center for Security and Emerging Technology at Georgetown University. Mr. Wolf was also the former assistant Secretary of Commerce for Export Administration and Ms. Giovanni Cinelli is a national security fellow at the National Security Institute at George Mason's and Antonin Scalia Law School.

Thank you for being here today. Your full statements will be made a part of the record and I'll ask that each of you keep your spoken remarks to five minutes exactly like he and I both did in order to allow time for member questions. I now recognize Ms. Nikakhtar for opening statement.

NAZAK NIKAKHTAR: Chairman Mast, Ranking Member Crow, Committee members and Staff, thank you for the invitation and opportunity to speak today. As a lawyer, economist, former adjunct university professor and former – former US government official, I've been on the front lines for the US economic challenge for decades.

I've served two tours – two tours in the US government Department of Commerce spanning four important positions including Acting Undersecretary of BIS. I am also an immigrant, a woman who escaped an authoritarian regime nearly 45 years ago.

I am acutely aware of what such – such regimes are capable of. They do not think like Americans. Capitalism is not in their interest. What they seek is the destruction of America and Western values. That is their endgame above all else. It is from all of these vantage points as a patriot and immigrant and an expert that I offer my views today.

The views and opinions expressed today are mine only and no organization with which I'm affiliated. In my written testimony, I take the position that we need more forward leaning policies to curb the exports of sensitive items to America's adversaries. I also take the position that congress needs much more transparency in how exports are being regulated to better evaluate the ways that the Commerce Department is addressing very serious national security risks.

I make the case that America was stronger 20 years ago, both in terms of economic resilience and in terms of military power before it led its technology and manufacturing capacity move offshore to the PRC. The PRC in turn, poured enormous amounts of money to indigenize and grow the innovations we willingly transferred to it.

China also transferred our technologies to other adversaries for its own benefit and to our detriment.

Now America let its technology offshore because we mistakenly believed that we needed the revenue from the **Chinese** market to innovate, but the money

received pales – pales in comparison to the value of the technology we transfer to **China**, coupled with the subsidies that the **Chinese** government used to mature these innovations into powerhouse mammoth industries that span across **China** today and are crushing competitors globally.

We lost, they won and **China** is now leading the world in many of the important technologies. Make no mistake, in semiconductors, a very apt example. **China** has developed the equipment wafer fabrication capabilities, the design technology and the upstream supply chains to dominate the global sector. Its immense control over the critical upstream supply chains also gives its leverage to destroy the chip sector of all other competitors.

Let me be clear. **China** no longer needs us with our technology, it can make both legacy and advanced chips and leading-edge chips. Is its throughput, It's the seven-nanometer level, great. No, but **China** can handle 30 percent yields because money is an issue for the **Chinese** government plus the yields are going to improve over time.

In comparison, we have neither of the IP, the manufacturing capacity to be self-sufficient across the full chip value chain. The reason again is that we chose to export our knowhow in exchange for money. So where does that leave us today? Desperate. Desperate for domestic manufacturing capacity, desperate for IP, and desperate for the manufacturing raw materials.

This is a direct result of our sell for revenue export control policies. **China** has been running faster than us and it is running exponentially faster, the stronger it gets by means of our exports. We have a very short period of time to reverse the current trend, which means that we have to move in big ways to make up for lost time.

Finally, I want to note that tightening controls and the way I recommend will not force American companies to offshore. The Indo-Pacific region is becoming dangerously unstable geopolitically. Europe is dealing with a historic energy crisis that precludes long term investments and energy sensitive tech industries.

And our other trading partners in Asia and South America don't have the skilled workforce or the infrastructure to support high tech manufacturing and R&D right now. To the extent that American companies offshore, they risk the possibility that – that their companies will be nationalized. **China** already controls a majority stake in all the American companies that offshore there years ago.

If it controls the companies now, it's certainly going to nationalize them tomorrow. This is obvious. America is still the great bet to invest, which is why I find so many incredible patriotic companies looking now to innovate in the US to outcompete our adversaries. Export controls, more aggressive export controls will

go a long way in giving these companies, these new startup companies, the runway they need to reclaim America's technological leadership.

Thank you for having me, and I look forward to a discussion that is robust, guided by what's in America's best interest. Thank you.

REP BRIAN MAST: Thank you, Ms. Nikakhtar. You nailed the time. So right on. I now recognize Mr. Coonen for his opening statement. We'll see if you can do – if you can – can do any better on that front.

STEVE COONEN: Thank you, Chairman Mast. Good afternoon, Ranking Member Crow and members of the committee. My name is Steve Coonen. It is an honor for me to be here to testify with you today. Following more than two decades in uniform as a US Army artillery officer and a foreign affairs officer, I spent nearly 14 years as an analyst at the Defense Technology Security Administration or TSA. It's the Pentagon's unit for developing export controls and technology security policies.

By the end of my tour, I was DTSA's senior foreign advisor for **China**. In this position I had the responsibility of preventing **China** from obtaining sensitive American technologies. In July of 2020, the Office of the Secretary of Defense bestowed on me an award for excellence for my work on **China**, but then in November of 2021, I voluntarily resigned in protest from my – my position.

I could no longer in good conscience continue to serve when I believe that too many officials refuse to recognize and correct US export policy failures concerning **China**. I felt like I was watching a car crash in slow motion every time the federal government approved a technology transfer that fed the buildup of an adversarial **Chinese** military and furthered their modernization efforts.

Too few inside the system seemed willing to recognize this danger. I have submitted to you my written statement, which was also released yesterday by the **China** Tech threat. My thesis is that willful blindness characterizes the various actors regulating technology sales to **Chinese** entities. The refusal to stop **China** from legally capturing American technology, undermines American national security and dishonors our forces willingness to sacrifice for our country.

At the center of the export control system is the Commerce Department's Bureau of Industry and Security or BIS. In my view BIS is failing to prioritize national security in its decision making. BIS is grossly underestimating **Xi Jinping's** military civil fusion strategy, which is diverting dual use technologies to the **People's Liberation Army**.

As evidenced in BIS's report on US trade with **China** that was just released this week, 20 – 2022 BIS approved 91 percent of applications with the export of controlled militarily useful technology to **China**. From my vantage point, the

main problem is that BIS takes a business first view of applications though there are scores of military uses for controlled technologies.

BIS will rubber stamp applications unless they have specific indications or intelligence of diversion. The problem with this approach is it's obviously extremely difficult to obtain intelligence of PLA diversion even though we know it's happening such as the case of **China's** hypersonics and using American technology to develop that control technology.

Second, **Xi Jinping** himself has told us through his military civil fusion strategy, the CCP will divert any technology for military purposes, so we shouldn't need formal evidence of diversion. **China's** assertion that they will use this technology for civilian purposes are lies from a regime that is characterized by dishonesty and non-transparency.

Third, unlike every other trading partner, the US has no effect of mechanism to verify how controlled US technology exported to **China** is ultimately used. In closing, we are failing to recognize the significant and decades long shortcomings associated with having a federal bureaucracy whose inherent interests are not necessarily aligned with our national security interests.

Given the length of time that these problems have endured over several administrations, be it republican or democrat, I believe only congress can implement the needed change. My paper offers eight specific suggestions but in deference to time limitations, I'd urge you to quickly implement the following three recommendations to fix our broken export control system.

First, make the presumption of denial the standard position for national security-controlled technologies and other critical technologies bound for the PRC. Second, give the Departments of Defense, State and Energy, greater authorities to determine the outcomes of a BIS dominated license process review and enhance their ability to quickly add controls for emerging and unlicensed technologies for which they have the greatest equity.

And then third requested GAO audit. I note a number of BIS process falls in my paper. A GAO audit should be conducted immediately to assess – to assess the risk that those violations are causing to national security.

That audits should also contain recommendations. I look forward to discussing these issues in greater detail with you.

And again, thank you for having me today.

REP BRIAN MAST: Thank you, Mr. Coonen. It was a good 7,000 word read and I – And I mean that. So I now recognize Mr. Wolf for his opening statement.

KEVIN WOLF: Great. Chairman Mast, Ranking Member Crow, members of the subcommittee, thank you for asking me to testify. I'm happy to help the subcommittee with its oversight role in any way that I can. The views I expressed today are my own. To help set the stage a little bit for the hearing. I thought it might be useful to list out some of the major and rather significant export control actions that BIS working with its interagency partners took in 2022. On the one hand, the changes are quite novel in that they focus on responding to as the title of this hearing is strategic national security threats created by specific countries namely **China** and Russia as opposed to the more classical country agnostic nonproliferation focused regime- based controls that govern the system and focused on dual use items since the end of the Cold War. And these are the types of items historically that were controlled that had a much more direct relationship to the development production or use of a weapon of mass destruction or conventional weapon.

And the – the recent controls from 2022 are much broader in scope. They use a combination of really novel and quite complex in use and user and list-based controls lists of specific items and – and controls that are extraterritorial, meaning that they apply to foreign made items even when they're outside the US. And another way of thinking about it is even when otherwise basic commercial items that are not normally subject to US or any non-US controls are involved, the new controls that came about in 2022 apply to activities of US persons and trade and otherwise uncontrolled item with many more specific entities of concern in Russia and **China** and elsewhere.

But on the other hand, the controls are not new in the sense that BIS mission has always been to administer an interagency export control system and an enforcement system, which I want to get into that governs the activities involving specific items end users and users and destinations in order to advance national security and protect national security and foreign policy interests.

The – the difference is that the national security and foreign policy objectives of export controls that were created at the end of the Cold War have and properly so expanded to deal with the broader strategic issues that involve in particular **China** and Russia. And the evolution of this policy thinking is best set out by the administration in – in two speeches that the national security advisor is given and in the preambles that BIS wrote for the two primary Russia and **China** specific rules that are set out.

And in essence with respect to export controls, the national security objectives clearly include broader **China** and Russia specific strategic – strategic objectives with respect to what the National Security Advisor calls force multiplying technologies and enabling technologies. And as described in far more detail and other testimony that I've given; my view is that there are two keys to making these and other follow-on strategic controls far more effective and less

counterproductive.

And by more effective, I primarily mean coming up with rules and systems that stop the transfer of the technology of concern to end users and destinations of concern from – from any destination. And the first key to success in this objective is to do all the hard work to ensure that our allies that also make similar technologies and that have producers of the items of concern, have the authority in their systems to impose controls over the same items for the same end users, same end users and same destinations.

And so it's important that they have an understanding of a common security objective that we are all discussing today in order to enhance the effectiveness of controls. The thing that I've been preaching about is more authority for the allies, so that they can impose with us plural, lateral controls and eventually my ideal is a new additional multilateral regime system focus on non-classical national security and human rights issues.

And now I'm not saying that all unilateral controls are bad or counterproductive. It's just that as ECRA clearly lays out, eventually they become less effective and more counterproductive. And the second key that I will discuss today in much more detail is the need for massively larger resources for BIS. BIS and its other agencies are doing great work.

But the demands, the de imposed upon BIS and the other export control agencies are far, far greater than what they were originally created for. BIS and the other agencies are processing 40,000 plus licenses and other requests in addition to all the novel controls and issues, particularly with respect to enforcement of the – the Russia and **China** controls.

So that's right at about my five-minute mark and I stand ready to answer whatever questions now or later however I can help. So thank you very much.

REP BRIAN MAST: I want to thank you Mr. Wolf. I now recognize Ms. Cinelli for her opening statement.

GIOVANNA CINELLI: Thank you, Chairman Mast and Ranking Member Crow and distinguished members of the subcommittee. I very much appreciate the opportunity to come before you today to provide some perspectives from both a long-standing legal career where I've had to advise in this area from a client perspective to operationalize the requirements that the Export Administration regulations and the underlying statutes have imposed.

And at the same time for my military service as a US naval intelligence officer where I have seen firsthand the actual impact of export controls out in the field and in the boots on the ground perspective. I am here today in my capacity as a national security fellow from the National Security Institute. The views that I'm

expressing are my own.

They do not represent any individual or other organization. As my co-panelists have said, export controls are all about national security and national security is predicated on both a proactive and a reactive strategy. If a national security foundation is predicated only on the ability to react to ongoing circumstances, that will place any country, not only the United States in a defensive posture and one in which you are almost shadowboxing because you're not sure where a particular issue will arise.

So as we look at the export control system today, we see that the majority of what has been described by my co-panelists is focused on that reactive nature. As we look at effectiveness and we look at the protection of US national security interests, it would be helpful to look historically of where today's system originally arose.

And I take it back to the 1970s when we had the first Export Administration Act that was predicated upon the geopolitical and geostrategic situation at that time. And at that time, it was effective. Why? Because it was premised primarily on a deny and delay concept, which matched where allies' partners in the United States was at the time.

There was a capability to deny access to parties, not just specific parties, but parties more generally and to also delay the advancement. That premise was coupled with an effective strategy by the Department of Defense in the maintenance of various lists like the Militarily Critical Technologies list and the Disruptive Technologies list.

And DTSA did Yeoman's work up through the 1990s to attempt to maintain that list until a combined set of factors, not only resources but focus and changing balances within the government on who and under what circumstances made decisions in the national security realm. I think these lessons are important as you look at the work that your committee is considering doing as you understand where and how there may be gaps and in some instances deficiencies in the operationalization of the EAR. I think it stands on three legs of the stool.

First, while export controls require flexibility, focus, and nimbleness, if the rules are so complicated and so convoluted that in order to implement them, you need a technical person, an economist and a lawyer, the question becomes how are they best protecting interests. The second leg of the stool is funding.

When the regulations and the underlying premise for export controls shifted in the 1990s from a deny and delay perspective to a run faster, there was an inherent need to maintain a degree of funding for the development of that delta to run faster. And at the time in the Clinton administration, while there was some aspect of a continuation of denying delay, the transition to shifting almost

everything to the run faster coalition resulted in gaps.

Why? Because the funding was not there on the government side to keep the delta that had been in place and on the industry side and the academic community side where the majority of the advancements were beginning to transition, the funding priorities, the focus, and the direction varied. This is not to say there were not circumstances when they were aligned, but they were not completely aligned and you had different drivers.

I fast forward to 2018 with ECRA where congress wisely reallocated a substantial substantive statute, in essence giving the Department of Commerce substantive authority for so many years. From 1994 through 2018 Commerce and the Export Administration Regulations were premised on emergency powers under the International Emergency Economic Powers Act. That was not a sufficient authority.

And with that I see that my time is up. I am happy to answer any questions and I apologize, Chairman Mast for my six minutes being over.

REP BRIAN MAST: I don't think you went over by maybe 10s. You're good ma'am. Thank you, Ms. Cinelli. I now recognize myself for five minutes of questioning going to take a point of privilege and say we have in the audience the members of the Palm Beach Police Department that joined us here in our committee. I just want to say thank you all for your service to our community and our country.

I appreciate you all very much. So I want to get into this – this conversation, a place that's interested me personally. Before I get into that, I want to ask more of a broad question and it's simply this and I'm going to ask Ms. Nikakhtar and Mr. Coonen, would you say that for Department of Commerce that they're primarily driven to enhance American commerce or to safeguard American national Security interests just broadly?

NAZAK NIKAKHTAR: I'm happy to answer that. I've served multiple different roles at the Commerce Department. Look, the Commerce Department's bifurcated, right? You've got the pro-business group and that's pretty much the majority of the Commerce Department. But you do have already a unit of the Commerce Department that handles enforcement of trade cases and they do that pretty well.

Within BIS, you have the enforcement group, they're very forward leaning, they're very enforcement minded, and then you've got the licensing folks which are a little bit less – less so. fundamentally, one can have the debate about whether commerce is capable of doing this. What I think needs to happen at BIS is a complete culture shift on the licensing side.

They need to see the threats for what it is and they need to really understand that, you know, continuing to do business with **China** and the revenue stream we get from them is not going to be the ticket out of this mess.

We have decades of evidence to show that, that strategy has failed. Fundamentally, I think commerce can do both, but we need a culture shift.

REP BRIAN MAST: I think that's an important term fundamentally, and it takes me to what I really wanted to ask about and that's fundamental research as it relates to what we're allowing **China** and others to – to learn.

There's an old saying, right, you give a man a fish, you feed him for a day. You teach him to fish, you feed him for life.

And you could almost say that we're helping to grow them and feed them for life with what we're doing. So for any of you, I would love to hear analysis on what needs to be changed with the fundamental research exception. What controls need to be updated on that? Should companies on the entity list be able to participate in fundamental research? Where are some of the places that you've seen this play out in – in generating problems for the United States of America? Maybe some other questions in there. How big of a risk does the CCP penetration of university research programs pose to the United States of America? And if you all could touch on that, I think it would be very worthwhile information for us to hear.

NAZAK NIKAKHTAR: I'm happy again to start on it since I've written about it in my testimony.

REP BRIAN MAST: So let Mr. Coonen start a minute, we like to share the wealth a little bit.

STEVE COONEN: Sir, I would just – just jumping back to your – your other question, I think it's important to note to answer your question of whether commerce is focused on – on – on commercial interests over national security interests. I think for an export control system to be effective; it needs to be predictable.

And so for all of our partners and allies, I would suggest that we do have a very predictable system and that they are able to get the capabilities they need. I think where that – were that – that line starts to shift from a business perspective to the national security where we need to focus more on the national security perspective, at least within BIS is when we start to talk about our adversaries.

And there, I think they haven't made that shift that has evolved over time where initially, we were more open and welcoming to the **People's Republic of China**. But now there's – it's an – it's an obvious threat and that seems as

though that mentality, that fundamental shift has not occurred yet for to focus from a business perspective to a more national security to defend our national security interests.

Thank you.

REP BRIAN MAST: I appreciate that and anybody care to touch on fundamental research in our universities? Ms.

Nikakhtar, please.

NAZAK NIKAKHTAR: Yeah, I'll add, our universities are civ. We've got **China's** 1000 talent programs. We've got similar programs in other countries. The technology that's already controlled isn't controlled when it's kind of called fundamental research. You do some basic researchers, advanced research from that. And then if you intend to publish, it's essentially falls out of the scope of controls.

Why not take every single thing on the commerce control list right now and just tell the universities for foreign countries of concern, we don't need to do it broadly. Foreign countries of concern, no more fundamental research exception. Even if you intend to publish, you need to get a license from BIS before you do that or whatever entity ends up handling export controls on dual use items.

REP BRIAN MAST: I'd love to ask more about that, but my time is expired. I now recognize Ranking Member Crow for five minutes.

REP JASON CROW: Thank you, Mr. Chairman. I just wanted to pick up on this line of questioning about in this theme that Commerce Department is somehow ill equipped to handle issues of national security and kind of that – that general thrust. You know, I sit on the Intelligence Committee, I've sat on the Armed Services Committee and what I see is a rapidly evolving landscape where more and more of our defense procurement and acquisition and more and more of the new technologies that are being fielded are COTS or Commercial Off the Shelf, right? That is – that is kind of the future of a lot of defense acquisition because it's cheaper, it's more rapidly fielded, it's more attritional. So Mr. Wolf, I'd like to just kind of hear from you your views. You've been in BIS, you've been in private practice, your career has straddled both public and private for many decades.

What's your view as to that trend in Commerce Department their ability to fully understand the national security impact and balance those equities between private innovation and commercial off the shelf technology, but also the best interests of US national security?

KEVIN WOLF: Yes, the mission of BIS when I was there when Zach was there

now and before is to advance and protect our national security interests. I don't think there's any doubt about that. It administers – administers an interagency system involving subject matter experts from defense, state energy and occasionally others to get input into both identifying what the threats are and making decisions on individual transactions.

With respect to the core point of your question and as Giovanna basically was alluding to, the national security landscape and the national security objectives of controls have evolved considerably. During the Cold War, they had a much broader strategic objective. After the Cold War, they became much more narrowly focused on items that were more specific to nonproliferation objectives and they were focused through a regime-based system of four multilateral organizations that identified items that had a much more direct relationship to the development, production or use of weapons.

And it was easier to tell the difference between a civil and commercial and military application in the earlier days. All of those things have been evolving and changed. The national security threat landscape with respect to **China** has become far more complicated, similarly with respect to Russia and other countries.

Identifying specific types of items that used to be the foundation of an export control system is not always as effective when the underlying activity of concern is with respect to a widely available commercial item, particularly, for example, on human Rights abuses use widely available commercial items and some of the modernization of advanced military systems fundamentally depend upon things that are widely available commercially and were created civilly.

And so that is why as the title of this hearing indicates and the objective of the rules that came out in 2022 focused much broader – on broader strategic objectives and a greater use of controls over activities of individual persons when the underlying item is not controlled and controls over transactions with specific end users of concern.

And and all of this added complexity, the novel technologies, the greater number of countries involved, the more bilateral relationships, the weaknesses of the regime system, particularly since Russia as a member of three of the four and has effectively a veto over progress in those requires, I think fundamentally a new way of thinking about the way we work with our allies and our allies realize a common security threat in order to address the issues that we're all discussing today.

And that requires a lot more resources. It's far more complex to do what I just described with a lot more time, a lot more briefing papers, a lot more meetings, a lot more analytical skills and technical skills than was the case in the 1990s when the current system was created. And I lay out the details in my commentary about why I think radically more resources are needed for BIS and their sister

agencies.

REP JASON CROW: Thank you, Mr. Wolf. In less than a minute, I also wanted to take the opportunity and correct the record regarding an earlier assertion about the nature of licenses and exceptions to Huawei. There was a comment made that the Biden administration has somehow been weakened Huawei. But isn't it true that it was actually the prior administration that granted licenses and exceptions to Huawei and that since the Biden administration has come in, they've actually tightened the rules around Huawei?

KEVIN WOLF: Yes. historically, before Huawei, it was generally a denial for listed entities and I'm unaware of any approvals when I was assistant secretary. There may have been some, but I don't know of any. And Huawei was the first principal case where there was a policy of granting licenses to a listed entity. And that started in the – I think, August or September of 2019, was formalized in August of 2020. And there's a Reuters article today, a story about a potential apparent chance, a plan to change that August of 2020 policy.

So, yes.

REP JASON CROW: Thank you. My time is out. I yield back.

REP BRIAN MAST: Thank you, Ranking Member Crow. Chair now recognizes Mr. Perry for five minutes.

REP SCOTT PERRY: Thank you, Mr. Chairman. Ms. Nikakhtar, just under the **China** policy corporations, I think if **China** – if the CCP demands it are required to share information with the party on technology. Is that correct?

NAZAK NIKAKHTAR: That's absolutely correct.

REP SCOTT PERRY: Yeah, so it's safe – I think it's safe to say that the CCP gets their hands on any technology they want, if it's come from America or anywhere else for that matter into the hands of a **Chinese** corporation if they want it, they're getting it.

NAZAK NIKAKHTAR: If it goes to a seemingly innocuous corporation, the CCP will get its hands on it if it wants it.

REP SCOTT PERRY: So according to BIS's most recent data, fewer than one percent, fewer than one percent of US exports require a license and of that less than one percent, 98 percent of those applications are approved. Is that – is that close? Is that correct?

NAZAK NIKAKHTAR: It's – it's astounding. When you're looking at this narrow subset of what's on the commerce control list and then you narrow it down with all the exemptions, you narrow it down with what doesn't require a

license, and then within that you're looking at 90 plus percent approval rate. And very little denial rate for items that are dual use; dual use, meaning, yes, it has commercial applications, but it also has military applications.

Every item on the commerce control list is dual use. That's what we're licensing to an adversary that is threatening to harm the United States and our allies.

REP SCOTT PERRY: So we're not really stopping any – I mean, appreciably, it's less than one percent, right? It's – we're not really stopping any technology in a meaningful sort of getting into the CCP. Now entities on the entity list are typically subject to a presumption of denial licensing policy. Do you think that BIS is faithfully implementing that when it approves 98 percent of license applications?

Do you think they're following that or is there some reason that it – look, it sounds astounding to me. What are we missing here?

NAZAK NIKAKHTAR: I mean, it's pretty horrific that the – when you look at the entity list, you have out of the 400 – approximately 473 **Chinese** companies on the entity. If you take into account the affiliates, 81 percent of them have licensing policies that have a case-by-case license review mechanism which for all intents and purposes minus a little bit of details essentially removes them from the entity list.

I mean, what are we doing? These guys are put on the entity list and then get treatment from somebody that's not on the entity list. It's absurd.

REP SCOTT PERRY: So I'm looking at two things here. You said in your testimony that we need to move in big ways, but I don't think I was listening to see if you were going to elaborate on that. And then in your testimony, you talk about us BIS more transparent with the process, I guess, so that we and the American people can see how they're approving things.

And can you – can you speak to the – if nothing else, the move in big ways we get to transparency thing. Can you give us like two or three? What are the big moves?

NAZAK NIKAKHTAR: Yeah, absolutely. So look, it's a really low threshold to be on the entity list, right. And so we should be designating many, many more companies. The fact that around 470, 473 of the entire **Chinese** industry, **Chinese** military and complex is absurd. We need to be designating more. Don't fear litigation. Defend the actions of the right in the interest of national security.

Also, we're not adequately designating subsidiaries and affiliates. I've worked trade. I have the unique ability to know everything in the trade laws, trade laws that have been upheld by the highest courts of the country and are WTO

consistent. Why are we not applying those laws, those regulations, that legal framework to determining affiliations? So a business that has close business ties with Huawei, right, like a company like Honor, that in the trade world would be deemed to be affiliated. We need to do the same for the entity list and BIS is going to complain about the burden. We don't need BIS to designate every single affiliate. BIS issues regulations that say affiliates are now on the entity list.

Industry do your own due diligence. And if you cannot do your own due diligence, then don't export because the risk is too high.

REP SCOTT PERRY: Okay, I'm going to run out of time. Mr. Coonen at some point, if you could comment on the presumption of denial that you talked about, but I want to – I want to get to Ms. Cinelli right now. CFIUS in the 20 seconds I have left broadly speaking, I feel like it's just not – I feel like it's not efficient, effective at all.

Am I wrong or what needs to be done there or am I completely in the woods on that?

GIOVANNA CINELLI: So I think I would call your question insightful. Any regulatory construct has deficiencies in it. Now CFIUS, and I'm going to tie it to the export laws because through the Foreign Investment Review Modernization Act of 2018 and ECRA, the Export Control Reform Act of 2018, for the first time there was a direct tie sir, between export controls and CFIUS. So in one sense, it was designed to bring a national security overview that would grant CFIUS additional reach into different transactions, but at the same time, it acted like limitation.

And what happens is these limitations come in. Congress proposes through legislation objectives to be met, but the executive branch is left with the interpretive capability to assess how that's implemented. And absent consistent oversight and congress is incredibly busy and these are, as all my co panels have said, dense regulations and incredibly complicated.

It allows the opportunity for too many things sometimes to slip through the cracks. And with CFIUS, just as with export controls, the systems are set up to be porous. And – and that's why considering different approaches sometimes to managing CFIUS and managing export controls to keep it proactive as well as reactive becomes an essential issue to continuously monitor.

REP SCOTT PERRY: Thank you for your indulgence, Chairman.

REP BRIAN MAST: Chair now recognizes Ms. Titus for five minutes.

REP DINA TITUS: Thank you, Mr. Chairman, I ask Ms. Cinelli, I appreciate your impressive resume, which you've told us about several times, but I think

your results are spurious when you talk about 98 percent being accepted.

We know that the regulations are long and in depth, but we also know that they are constantly being updated.

They are published that they – I'm sorry – oh, I'm sorry, I'm looking at the right person and saying the wrong name, excuse me, I'm looking at you. They are constantly updated. They outline what items are available, which ones are allowed, what end users are allowed, which ones are prohibited. So why would businesses take a lot of time, money, effort and personnel to apply for something when they know it's not going to be approved? I don't think they do, but that's my opinion of the research. I would ask Mr. Wolf some questions. You say that there are two things that we need to do and that you're outlining in your report, but I'd like for you to talk about them a little more here. And there are common sense things, things our regulations aren't going to work very effectively if they're just unilateral.

We need to have more of a multilateral approach. We've seen that with Japan and the Netherlands. What about Australia? Could we – what can we do to encourage other nations to have that approach with us? Second, we need to put more resources into the effort. We need more technical analytical resources because the world has become more complex.

How do we do that? Do we need to designate perhaps an international coordinator or someone who has a higher-level position to oversee this? And then the third thing I would just ask is what about we talk about a carrot and a stick. What about things like the CHIP Act, where we encourage development or manufacturing here, but we put restrictions on it so that we don't get into this export problem that concerns our both commercial and national security interests?

KEVIN WOLF: No Great question. Thanks for the comments. Yes, it's generally the case. I'm a practitioner. I help people comply with the regulations. And when I tell them the license isn't going to be granted because of the policy and the regulations, they generally don't bother applying. It's not worth the time. Sometimes, they do in order to get the denial for other reasons but that's why the statistics are like they are.

It's the same thing at the State Department where the vast majority are approved. Same thing at CFIUS, the vast majority are approved. People don't make submissions for outcomes they know are going to be negative.

If you don't like the policy and the regulation of approval, then focus on that but the percentages aren't really the way to – to think about it that way.

My principal advocacy with respect to making the rules more effective is that the

Congress should work closely with the administration at working with the allies better to articulate a significantly expanded vision for the role and purpose and scope of export controls. Far beyond the more narrow nonproliferation focused of the – of the post-Cold War era.

And in particular, I think that a coherent vision of government coming together to say that export control should be used not only for items of classical nonproliferation concerns, but also for the broader strategic issues that we're all discussing today that there needs to be the authority in each of the allies to impose controls outside of the regimes and not limited to the post-Cold War regimes which each three of the four give Russia a veto, that there should be multilateral organization and structure or at least agreement among the allies to control items for human Rights abuses.

That doesn't exist at all. And the allies just frankly need help on capacity building on enforcement. The US is largely unique in its enforcement resources and particularly with respect to Russia to make the controls more effective. Thank you. We need coordination and cooperation of allies and there needs to be much more intra governmental coordination between allied country licensing and policy as well as their enforcement resources.

With respect to Australia, I'm a big advocate for substantial changes to the international traffic and arms regulations. With respect to implementing Aukus, there's legislation out there, the Torpedo Act, which I've read, which seems terrific. And it's basically what we tried to do when I was in government with respect to the export control reform effort in order to allow the government to spend more time focusing on countries of concern, reduce the burden on trade by and among between close allies so long as there were sufficient protections in place and Aukus is the way to do it. With respect to your – somebody to focus on this, this is incredibly complicated work working with the allies.

Diplomacy takes time and it's hard. And the allies have very different views depending upon the country and the agency about thinking about export controls differently. And it requires a significant amount of resources and expertise and state commerce, the other agencies to work with the allies to come to what I believe requires a fundamentally new and expanded thinking about the role of export controls.

And then my last comment is that there should be a specific office within the Commerce Department to evaluate the effectiveness and the impact of all these rules. The Treasury Department has recently created an office to do this with respect to sanctions. And surprisingly, there isn't anything like that at the Commerce Department.

And – and we really – it's a lot of decisions based upon gut and – and anecdote and partial data, but no major system to collect data and organize it and analyze

it to know the impact and what more can be done. So I've got a long list of recommendations and ideas, but those are ones that I think are directly responsive to your comments.

Thank you for asking.

REP DINA TITUS: Thank you. Thank you, Mr. Chairman.

REP BRIAN MAST: Thank you. Ms. Titus. Mr. Chair and I recognized Mr. Mills for five minutes.

REP CORY MILLS: Thank you, Mr. Chairman. I wanted to ask a question with the war in Ukraine, you're seeing the use of US technology being used in Iranian drones that has surfaced as a major problem. And Russia is now using these Iranian drones with deadly effect in Ukraine against the civilians. How can we address the specific problem of low-level technology that is widely available being exported to Iran for the use of drones? And I'll start with you Ms. Nikakhtar.

NAZAK NIKAKHTAR: One of the issues we have in the export administration regulations is this lack of a see-through rule, right? And so if you have technology that's embedded in something else and if it doesn't meet this de minimis standard, then it really doesn't require a license. And that's how a lot of the things that we're getting into **China** is falling to our adversaries.

Now if items aren't controlled, right, we need to – potentially, it's a really great question. We need to potentially really look at what that technology might be capable of even if it's not controlled, of course advocate for controls but then really think about whether we want to put in policies in place specifically for **China**, knowing that **China** has this massive – you all don't need me telling me to tell you this – but **China** has a massive history of divergence, right, diversion where everything you send to it essentially goes to some malign actor, you can bet on it. So it's a broad solution, but depending on whether it's controlled or not, we can legally impose restrictions on what's going there.

Thank you.

REP CORY MILLS: Thank you so much. And yeah, I absolutely agree. I mean, especially as we look at the geopolitical alliances that have been forming over time with Russia, **China**, Iran and North Korea, knowing that they're sharing and utilizing technology in an effort to launch an economic resource warfare, not just kinetic, but utilizing different technologies in advancement of this to try and help with the economic advancement and in some cases coercion of many of those to advance the Belt and Road initiative.

The same question staying on topic, I'd like to ask you as well, Mr. Coonen.

STEVE COONEN: Yes, sir, I think another important element of the problem that we have is **China** is probably – probably one of their major suppliers and that the end use checks agreement that we have between the US and **China** is – is – is largely inadequate if not totally inadequate. We only have one export control officer to do the verification.

So if we want to follow up on any export to **China** after it's been made and it's unique to **China** as we can, it's not like this with any of our other trading partners. So they only have one export control officer on mainland **China** to – to do any post share – post shipment verification checks. When I did a research paper on this for the Secretary of Defense, there are averaging 55 checks per year.

I think it's even gone down because there were refusing them last year until we put them on the unverified list and then move them over to the – the entity list, which was a good thing. But it just shows how – how difficult that problem is. So there's no mechanism in place to ultimately track where – who's the ultimate end user.

So it invites diversion to internally within **China** or to North Korea or in the case that you just offered Iran.

NAZAK NIKAKHTAR: May I add a point? It's a really important point and I want to tease it out. And I want something for this committee to know. The end use checks in **China** are authorized by MOFCOM. When I was at the International Trade Administration at the Commerce Department, it's MOFCOM who also audits our trade checks to ensure compliance.

MOFCOM allowed me to go into a company for three weeks and unearth anything I could to make sure that there's no trade violation. And I can tell you that I still hold the record at the Commerce Department for failing every **Chinese** company I ever audit because I always found the smoking gun and none of that was ever litigated.

But going back to the main point, MOFCOM restricts BIS end use checks. Half a day, they can barely look at anything. A MOFCOM official has to be there. And we're saying – and then we were just talking about how much **China** is responsible for a diversion. Mr. Wolf says we need to give BIS more money. Okay, maybe I can see some arguments for that having merit, but you give the end use check people more money.

There are not – how many people do you think you can put in **China**? Even if you had one person at every single company, there is no way they could find all the ways that **China** in their very sneaky misuse and divert and exploit our export control rules. So let's be pragmatic and realistic about this. No matter how many people you put there, we're not going to catch what they're doing.

REP CORY MILLS: And in my last 20 plus seconds, I want to stay with you on this, Ms. Nikakhtar. The De minimis rule threshold for **China** is 25 percent substantially higher than the other adversaries like Iran, North Korea, Cuba and those I mentioned previously. What does that mean and what should it be?

NAZAK NIKAKHTAR: It basically means that you can just – you take a gaming computer with exquisite semiconductor chips, you send that to **China**, no license, **China** sends it to Russia, they take all of it out, right? It's absurd, it's absurd, we're doing. **China** is not like other countries, right. **China** is a foreign adversary.

We really need our rules to reflect that. I would take it down. Like I said, I would also add the see through rule.

Look, I'll be frank, I don't want to export anything sensitive **China** or anything for that matter to a genocidal regime that's also threatening to harm the United States and our allies. I personally I would take it all the way down to zero.

I don't want anything to get into **China** in any way, shape, or form.

REP CORY MILLS: You're definitely one of my favorite panelists so far. With that, I yield back Mr. Chair.

REP BRIAN MAST: Thank you, Mr. Mills. The Chair now recognizes Ms. Dean for five minutes.

REP MADELEINE DEAN: Thank you, Chairman Mast and Ranking Member Crow and thank you to our witnesses for being here today and testifying and offering us your expertise and your passion around these issues. I just want to backtrack a little on something that was just discussed in terms of Russia deploying Iranian made unmanned aerial vehicles in Ukraine discovered in 20 September of 2022. Assistant Secretary Wolf, isn't it true that the Biden administration established a task force to investigate that and then I believe promulgated a rule to target Iran supply to Russia? Could you just confirm or tell us?

KEVIN WOLF: Yes, absolutely. So a couple of months ago, a rule was published using something called the foreign direct product rule. Foreign made items made with US technology or equipment if going into items destined to Iran or for use in a UAV for Russia, even though not from the US and not US origin content are now subject to US export controls as a result of a new rule.

To address that exact point, there's you know, massive increase in resources to track down diversion and distributors and third parties involved in chips and other items making their way into such items and to Russia.

And so yeah, I'll stop there.

REP MADELEINE DEAN: Thank you very much. I wanted to follow up Mr. Wolf, on the ending of your testimony and I read in your testimony that you were surprised to see the BIS fiscal year 2024 budget for export control policy and enforcement efforts remaining flat. You go on to say everyone agrees that BIS and export controls are central to strategic and classical national security and foreign policy objectives – objectives.

BIS's budget should reflect that position and be equally serious. So what are some of the specific areas where you think BIS could urgently use some additional funding, staffing, and expertise?

KEVIN WOLF: Thank you for noticing. So you know, compliments to the previous administration for substantial increases in the BIS budget. Since when I was there, I don't know the story behind the budget. Just in reading it, I saw it's flat. And for everybody calling for more activity and more controls and more research and more analysts, there should be equally large number of people adding to the ranks of BIS and the other export control agencies, defense technologies, security administration, State Departments, ISN and DTCC and the Department of Energy's NNSA require equal attention as well.

So you need more people doing data analytics. The rules are far more complex and the diversion potential higher. You need dramatically more enforcement resources to follow up on leads and track down and work with the allies with every new country and every new bilateral issue. And this idea that I have about substantially expanded ways of thinking to control items far beyond the classical multilateral regimes that requires more interaction, more diplomacy, more negotiation with the allies.

This is in addition to just governing and administering the regular licensing system so that things can move through as quickly as possible within the needs of the various agencies. So I would basically sort of top to bottom. I think the demands on BIS now are radically and substantially different than they were when I was there and certainly in the 1990s when the current system was established.

REP MADELEINE DEAN: And you –

NAZAK NIKAKHTAR: –Ma'am, excuse me. May I make an observation?

REP MADELEINE DEAN: I just want to follow up on that if you don't mind. Mr. Wolf, do you have either a percentage that the budget should be increased or a dollar figure, any kind of an estimate?

KEVIN WOLF: No, I'm not smart enough at the inside baseball of the current budgets, but, you know, at least a doubling, I mean some very radical substantial

increases, doubled, quadruple. I mean the volume of activity being run through BIS and the significance of all the issues everybody is properly laid out today warrants dramatically larger staff.

And so at least a doubling of their current budget and the resources and the people and the expertise to go along with it.

REP MADELEINE DEAN: I have another area of interest, but do you want to 10 seconds tell us what you wanted to add?

GIOVANNA CINELLI: Yes, 10 seconds. There's a common thread here, the foundation for how the EAR is applied from all this Licensing enforcement is the classification system. So in response to your question about resources, to the extent BIS has authorities, there should be significant resources devoted to the proper classification and the development of the commerce control list.

REP MADELEINE DEAN: I thank you for that. And then very quickly, I'm very concerned, I know the world is concerned frankly about fentanyl, the precursors coming from **China**. If you could shed any light Mr. Wolf in the just 20 seconds, I have remaining on what is going on there. I met yesterday with Secretary Blinken. We now know that the precursors are coming into Mexico and, of course, cartels and others are mixing them.

KEVIN WOLF: A serious, horrible issue. I'm glad you're focusing on it, but I'm not the expert in how to address the situation.

REP MADELEINE DEAN: Anybody else? 10 seconds?

NAZAK NIKAKHTAR: Yeah, I mean, we have trading agreements with Mexico. Mexico has to step up and do the enforcement it needs. It's ridiculous that we have maintained open borders, but they're not willing to do their part. So absolutely it's a good question.

REP MADELEINE DEAN: While I would push back on the open borders piece, but thank you. You're right, we have to partner with –

NAZAK NIKAKHTAR: Trading borders, not people, right.

REP MADELEINE DEAN: Thank you. I yield back.

REP BRIAN MAST: Thank you, Ms. Dean. Chair now recognize my favorite Green Beret. I'm just kidding. He's not my favorite. Mr. Waltz from Florida.

REP MIKE WALTZ: Yeah, I just want to share some of the concerns of that. We've heard on the committee that I think we're with our current construct, we're sitting kind of in the worst of both worlds. Our allies are frustrated.

I see actual promotional advertising materials saying buy our stuff. It literally says it may not be as good as the Americans, but you don't have to deal with their export controls.

Then on the other hand, we literally see our greatest adversary, the PRC rolling out item after item after item from drones to hypersonics, we can go down the list that look exactly like ours and in some cases are performing better. So we have a construct that's frustrating our allies and enhancing our adversaries for all kinds of reasons.

I want to – I want to take my time though to drill down on the operating committee. We've talked a lot about commerce today, but the Department of Defense has a say in this energy and state have a say on this. And I find it striking and have throughout my career that when the agencies disagree, it elevates the operating committee.

And because the Department of Commerce is both chair and a member, they basically have the overwrite. And so there's a lot of concern and I share the concern that commerce is overweighted in its power when it comes to application determinations. And these are the very few that actually even go to the operating committee, separate issue, because of Commerce's position.

And from – according to our data from – from 2017 to 2019, there was a 60 percent increase of licensing decisions made by commerce as the chair of the operating committee without the consensus of the Department of Defense, State, and Energy. And then furthermore, 10 percent of that, the chair made its decision with the support of only one of the other agencies.

So I guess my question is if we don't go to necessarily default no, which I wouldn't be opposed to, but if we don't go to default no, I think we should go to default consensus and that particularly if the Defense Department has serious national security concerns. So Mr. Coonen, do you think that harmonization of the sanctions list, because we also have all kinds of different lists that don't match where the Defense Department can say we have all of these concerns on these items or even these companies and then commerce can say, thank you very much, but we're going to do it. Anyway, do you think the harmonization of those lists across US agencies could help with these issues and particularly with PRC diversion of technology?

STEVE COONEN: Sir, I absolutely think that the harmonization of those lists would help. I also think that the rules, the BIS is not doing anything that is not permitted in the rules. And so those rules need to change. And that's why in my – my paper, one of the recommendations is to rebalance some of the authorities with the other departments.

So for example, with the Department of Defense, they should have potentially a

veto or a greater sway, if you will, when it comes to items that are controlled for national security reasons or for anti-terrorism. And it's the same for the Department of State. They should have more a bigger vote, if you will, when it comes to issues that – that are for technologies that are controlled for regional security reasons or for some of the nonproliferation regimes.

REP MIKE WALTZ: Ms. Nikakhtar do you have anything to add there?

NAZAK NIKAKHTAR: One of my recommendations was it's – it's ridiculous that commerce has an outside vote.

These other agencies have the expertise, the expertise including the equities right to weigh in. I think that my recommendation was and rather than it go to the assistant secretary who has for licensing, who has an imbalanced view at BIS because the enforcement guys, like I said, are pretty forward leaning, that once it's escalated, the undersecretary who can represent both equities get a vote, but then, every agency gets a vote in the appeal process and if you need a tiebreaker, you go to the National Security Council.

Thank you.

REP MIKE WALTZ: Thank you. Ms. Cinelli, do you have anything? Okay, great. Mr. Chairman, I have legislation that I look forward to marking up through this subcommittee and committee that would do just that and harmonizing these lists and hopefully really getting our arms around this problem. We cannot sit on armed services as well.

We cannot spend and science and technology \$900 billion a year advancing into the most advanced technologies in the world to watch it literally walk right out the back door. I look forward to this committee support. Thank you. I yield my time.

REP BRIAN MAST: I thank the witnesses for their valuable testimony and the members for their questions. I think we did all get a great deal out of this. I thank the staff for their research on this as well. I think there's a broad consensus that there are gaps. There's different solutions on how to – how to fix those gaps and fill those holes but certainly a broad consensus that there are very serious issues for us to deal with.

I look forward to marking up the legislation of Mr. Waltz and any other ideas that members of the committee will have in dealing and addressing this issue. Members of the subcommittee may have some additional questions for the witnesses, and we'll ask that you respond to these additional questions in writing.

And in that, I now recognize Mr. Crow for any closing remarks that you may have.

REP JASON CROW: Thank you, Mr. Chairman. I appreciate you calling this important hearing and thank you to all the witnesses for taking time out of your busy work schedules to have this discussion with us and to have a robust back and forth. And I agree with you, Mr. Chairman that I think we do all share the same goal and that – that is to balance American competitiveness and make sure that American businesses are robust and thriving at the leading edge of technology.

And we protect their technology and at the same time, we address our adversaries' threats, particularly Russia and **China**, but – but also others that pose that threat. And we might disagree on – on how to get there and some of the steps, and like – like you said so well where those gaps are and maybe why they exist, but look forward to continuing that discussion to figure out where we can find some common ground and address it in the best interests of the United States and our shared constituents.

So with that, I thank you again and yield back.

REP BRIAN MAST: Pursuant to committee rules, all members may have five days to submit statements, questions and extraneous materials for the record subject to the length of limitations. Without objection, the committee stands adjourned.