

Congress of the United States

Washington, DC 20515

February 5, 2016

The Honorable John F. Kerry
Secretary
U.S. Department of State
2201 C Street, NW
Washington, D.C. 20520

Dear Mr. Secretary:

On January 12, 2016, the House Committee on Oversight and Government Reform and the House Committee on Homeland Security held a joint hearing entitled “Wassenaar: Cybersecurity and Export Controls.” The purpose of the hearing was to review the interagency export control policy and process that led to the Department of State agreeing in 2013 to add cybersecurity intrusion and surveillance software and technology to the Wassenaar Arrangement export control list without appropriate consideration of the cybersecurity implications of this new control.

During this joint hearing, Members requested that witnesses from the Departments of State, Commerce, and Homeland Security, and other interagency partners reconsider implementing this control and re-engage during the upcoming Wassenaar Arrangement planning meetings to address the pressing national security and cybersecurity concerns raised during the hearing.

Our joint hearing demonstrated widespread opposition to adding cybersecurity intrusion and surveillance software and technology to the Wassenaar Arrangement export control list. Several industry witnesses testified that this addition to the control list was unworkable and would significantly undermine the ability of industry and the government to quickly address cyber threats. The United States is a leader in this cybersecurity area, and there is a growing consensus that the export control language on cybersecurity intrusion and surveillance software and technology would have a devastating impact on cybersecurity efforts worldwide.

In addition to the concerns raised in the joint hearing, we are concerned the Wassenaar Arrangement may not be the appropriate framework to control cybersecurity

tools. Before agreeing to future export controls for cybersecurity tools, we request that the interagency undertake a government-wide review of this larger policy question.

The United States must always demonstrate global leadership on cybersecurity matters. According to testimony received at the hearing, addressing this issue through U.S. policy alone would not be enough due to the cross border nature of cyber threats. Furthermore, the language of the Arrangement itself appears to preclude an interpretation that allows for legitimate cybersecurity activities.

We believe that the far-reaching implications of this control must be fully documented and understood as a prerequisite for any solution. Much of this process has been ongoing through public comment, consultation with advisory committees, and work within the interagency. We unambiguously expect that the U.S. Department of State will work to renegotiate the controls at the Wassenaar plenary.

We respectfully request you update the Committees on the options open to the State Department, and confirm whether or not the U.S. Department of State will seek changes to the 2013 Wassenaar Arrangement control on cybersecurity intrusion and surveillance software and technology in the 2016 round of the plenary session.

Given that the deadline for submissions occurs at the end of this month we request a Staff and Member briefing for the House Committee on Oversight and Government Reform and the House Committee on Homeland Security be held as soon as possible, but no later than February 26, 2016.

Additionally, in order for the Committees to continue their oversight work on the export control and international regulation of cybersecurity items and information technologies we respectfully request that you provide notification within twenty-four hours of any proposed export control by the Wassenaar participating states on issues relating to computer forensics tools or techniques, mobile device or network forensics, or encryption.

Please contact Troy Stock of the Oversight Majority staff at (202) 225-5074, Brian Quinn of the Oversight Minority staff at (202) 225-5051, Brett DeWitt at the Homeland Security Majority Staff at (202) 226-8417, and Christopher Schepis of the Homeland Security Minority Staff at (202) 226-2616 with any questions about this request. We respectfully request a response to the question in this letter as soon as possible, but no later than February 19, 2016.

Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman
Committee on Oversight and
Government Reform



Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform



Michael T. McCaul
Chairman
Committee on Homeland Security



Bennie G. Thompson
Ranking Member
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Will Hurd
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Robin L. Kelly
Ranking Member
Subcommittee on Information Technology



John Ratcliffe
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Cedric L. Richmond
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