

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

January 28 2016

The Honorable Michael McCaul  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative McCaul:

Thank you for your letter to Ambassador Rice regarding the Department of Commerce's proposed rulemaking and its potential impact on the nation's cybersecurity posture. I am responding on her behalf. The Wassenaar Arrangement was established in 1996 to promote international security by regulating the transfer of conventional weapons and dual-use goods and technologies. In 2013, the forty-one Wassenaar Participating States agreed that items related to "intrusion software" and IP network surveillance systems were of concern for national security reasons and should be added to the Wassenaar dual-use lists.

As you note in your letter, the export of sophisticated hacking technologies to criminal organizations or repressive regimes is a legitimate national security concern. We agree that keeping these technologies from illegitimate actors must not come at the expense of legitimate cybersecurity activities that are vital to protecting our nation from rapidly evolving cyber threats. Indeed, President Obama has identified cybersecurity as one of the greatest national security challenges we face as a nation.

Stakeholders raised serious concerns regarding the scope of the draft rule to implement the 2013 Arrangement among the 41 Wassenaar party states on intrusion software during the proposed rule comment period. As a result, the Department of Commerce has advised that it will not issue a final rule without at least one more round of public comment on a revised draft rule. The Administration is committed to taking into account the impact that any export control rule relating to cyber technology may have on our national security and adequately considering the burden that such a rule may place on legitimate cybersecurity activities. To that end, we have intensified our engagement with experts and stakeholders from the U.S. government and industry on how to mitigate the national security risks posed by the proliferation of cyber tools in a manner consistent with promoting cybersecurity. As Principal Deputy Assistant Secretary Vann H. Van Diepen said at Tuesday's hearing, "[O]ur responsibility is to ... work hard and find the ... best solution that both gives us some ability to address the security concerns we're trying to address while avoiding these unintended consequences."

Thank you again for your letter, and please let us know if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Caroline A. Tess". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Caroline A. Tess  
Special Assistant to the President and  
Senior Director for Legislative Affairs  
National Security Council

cc: Representative James Langevin